

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
WESTERN DIVISION

JIM BRADSHAW
Plaintiff

V.

NO. 3:96CV009-B-A

WILLIE ED THOMPSON, Individually
and in his Official Capacity as
Deputy Sheriff of Benton County,
Mississippi; DANNY JOE SMITH,
Individually and in his Official
Capacity as Deputy Sheriff of Benton
County, Mississippi; ALBERT ARNOLD
McMULLEN, Individually and in his
Official Capacity as Sheriff of
Benton County, Mississippi; HARRY D.
PHILLIPS, Individually and in his
Official Capacity as a Field Officer
for the Mississippi Department of
Corrections, and WILLIAM R. FORTIER
Defendants

MEMORANDUM OPINION

This cause comes before the court upon the motions to dismiss filed by the defendants, Willie Ed Thompson, Danny Joe Smith, and Albert Arnold McMullen. The court has duly considered the parties' memoranda and exhibits and is ready to rule.

FACTS

In considering a motion to dismiss, the court must accept as true the factual allegations of the plaintiff's complaint. Storey v. United States, 629 F. Supp. 1174, 1176 (N.D. Miss. 1986). Bearing that in mind, the facts, as set forth in the plaintiff's complaint, are as follows. In August of 1994, the plaintiff agreed to sell a Kenworth truck which he owned to the defendant Thompson,

a deputy in the Benton County Sheriff's Department. Since Thompson was financing the truck, Bradshaw retained title, which he soon thereafter pledged as collateral on a loan from the Bank of Faulkner. On January 31, 1995, for reasons which are irrelevant at this time, the plaintiff, along with Joe Tatum, an employee of the Bank of Faulkner, attempted to repossess the truck from Thompson. After driving from Tippah County to Thompson's home in Benton County, the plaintiff used an extra set of keys to start the truck and begin the drive back to Tippah County. When Tatum called the Benton County Sheriff's Department to notify Thompson that the truck had been repossessed, as opposed to stolen, Thompson, along with defendant Smith, another deputy, left the sheriff's office in pursuit of Bradshaw and Tatum. After intercepting Bradshaw and forcing him to pull to the side of the road, deputies Thompson and Smith drew their service revolvers and ordered Bradshaw to step out of the truck. When Bradshaw refused to do so, Thompson threatened to kill Bradshaw and fired a round into a tire on the truck. Upon being fired upon, Bradshaw pulled away, damaging one of the deputies' cars in the process. The deputies gave chase into Tippah County, where Buck Tatum, Joe Tatum's father and president of the Bank of Faulkner, met the parties at the county line. Bradshaw continued into town, but Joe Tatum pulled to the side of the road. Thompson, who had ceased pursuit after entering Tippah County, approached Joe Tatum's vehicle and threatened to kill Tatum, firing

a round into the air. Upon seeing Thompson threaten his son, Buck Tatum grabbed his shotgun from his truck, loaded it with birdshot, and fired at Thompson, hitting him with at least one round. Thompson gave chase to Buck Tatum, firing several shots in Tatum's direction and threatening to kill him. Eventually, both Buck Tatum and Bradshaw were arrested.

Buck Tatum hired the defendant Fortier to represent both Tatums, as well as the Bank of Faulkner and Bradshaw. Fortier had represented Bradshaw on a prior occasion in which Bradshaw pled guilty to felony marijuana possession, for which Bradshaw was on probation at the time. While Buck Tatum was released after a preliminary hearing, Bradshaw remained in jail for fifty-nine days. After spending several weeks in jail, and with Fortier unable or refusing to secure his release, Bradshaw decided that he should have separate counsel from the Tatums. However, when Bradshaw's wife told Fortier that they were going to hire someone else to represent her husband, Fortier responded by threatening to have Bradshaw's probation revoked and Bradshaw sent to prison. As a result of this threat, the plaintiff continued to allow Fortier to represent him.

On March 30, 1995, Bradshaw was allowed to post bond and was released from jail. Following his release, the plaintiff attended a meeting in Fortier's office in which Fortier informed the plaintiff that he had reached an agreement with the sheriff's

department for the dismissal of all criminal charges that had been filed or could be filed by or against any of the parties. Fortier stated to the plaintiff that all parties would retain any civil actions they may have for violation of civil rights. Since the agreement had not been finalized, Bradshaw was to return a few days later to sign the written agreement. When Bradshaw returned to sign the agreement, Fortier was not present, and no one from Fortier's office explained the terms of the written agreement to the plaintiff. The plaintiff signed the agreement without reading its terms, and only later discovered that the agreement released the sheriff's department from all civil liability.

Bradshaw has now filed a thirty-page complaint detailing the events of January 31, 1995, and the subsequent representation by Fortier. The plaintiff has asserted several causes of action against the defendants, including claims against the sheriff's department under 42 U.S.C. §§ 1983 and 1988 and claims of legal malpractice against Fortier. On May 1, 1996, the court dismissed the plaintiff's claims against Fortier without prejudice for lack of subject matter jurisdiction. Defendant Harry D. Phillips was voluntarily dismissed by the plaintiff on June 3, 1996. The remaining defendants have filed motions to dismiss on the grounds that the April 28, 1995, release agreement signed by the plaintiff bars Bradshaw from pursuing his § 1983 claims as alleged in the complaint. The agreement states in relevant part as follows:

Jim Bradshaw...does hereby release and forever discharge Benton County Deputies Willie Ed Thompson and Danny Joe Smith, Benton County, Mississippi, and the Benton County Sheriff's Department, and any and all other persons...which are or might be claimed to be liable to me, from all claims and demands, of whatever nature, both criminal, civil, or otherwise...arising out of the aforesaid events of January 31, 1995.

LAW

The plaintiff asserts that under the provisions set forth by the Supreme Court in Newton v. Rumery,¹ careful scrutiny should be given to what the Supreme Court has termed release-dismissal agreements. A release-dismissal agreement is an agreement wherein a criminal defendant releases his right to file a civil action under 42 U.S.C. § 1983 in exchange for a prosecutor's dismissal of pending criminal charges. The Supreme Court has rejected the notion that all such agreements are invalid per se. Rumery, 480 U.S. at 397, 94 L. Ed. 2d at 419. However, a release-dismissal agreement will only be valid and enforceable if the agreement was voluntary, there is no evidence of prosecutorial misconduct, and enforcement of the agreement would not adversely affect the relevant public interests. Rumery, 480 U.S. at 398, 94 L. Ed. 2d at 419. Although the plaintiff asserts that the release-dismissal agreement is invalid under the provisions of Rumery, the court finds that Rumery does not apply.

¹ 480 U.S. 386, 94 L. Ed. 2d 405 (1987).

Rumery and its progeny involve factual scenarios in which the plaintiff knowingly entered into a release-dismissal agreement. However, this action presents the scenario of a unilateral mistake, wherein the plaintiff did not understand the nature of the agreement. Bradshaw asserts that he believed he was only releasing his rights to bring criminal charges against the defendants, and has indicated that he would not have signed the agreement if he had known that it included a waiver of all civil causes of action. However, a settlement agreement is not voidable on the basis of a unilateral mistake, unless there is evidence of fraud or duress. Taylor v. Firestone Tire and Rubber Co., 519 So. 2d 436, 438 (Miss. 1988). The plaintiff has presented no evidence of fraud or duress asserted by the defendants Thompson, Smith, or McMullen, and therefore the agreement should not be set aside on the grounds of unilateral mistake.

Furthermore, the plaintiff readily admits that he failed to read the release. It is well-settled in Mississippi that:

A person cannot avoid a written contract which he has entered into on the ground that he did not read it or have it read to him, and that he supposed its terms were different, unless he was induced not to read it or have it read to him by fraudulent representations made to him by the other party, on which he was entitled to rely.

Garrett v. Pigford, 67 So. 2d 885 (Miss. 1953). Although the plaintiff only has a seventh grade education, there is no evidence that he is illiterate, and the release sets forth in very clear and unequivocal terms that Bradshaw was releasing all persons from

liability for both civil and criminal claims arising out of the incidents of January 31, 1996. Bradshaw attempts to blame his attorney, Fortier, who Bradshaw maintains had a conflict of interest, and who allegedly assured Bradshaw that he was only releasing his criminal claims. Even if Bradshaw's attorney had a conflict of interest and/or failed to properly advise him, Bradshaw is not relieved of his duty to read the agreement. Fortier's alleged failures or misconduct -- if they were true -- may give rise to a claim by the plaintiff against his then attorney, but such allegations do nothing to invalidate the release-dismissal agreement.

CONCLUSION

For the foregoing reasons, the court finds that the defendants' motions to dismiss should be granted.

An order will issue accordingly.

THIS, the _____ day of July, 1996.

NEAL B. BIGGERS, JR.
UNITED STATES DISTRICT JUDGE